



D. KENT MICHIE
Insurance Commissioner
Utah Insurance Department

JON M. HUNTSMAN, JR.
Governor

BULLETIN 2007-1

To: All Title Insurance Insurers, Agencies and Producers

**From: D. Kent Michie, Utah Insurance Commissioner,
and the Title and Escrow Commission**

Subject: Prohibited Escrow Settlement Closing Transactions

Due to the large number of "land flip" transactions and the use by real estate agents of the Simultaneous Closing Addendum to Real Estate Purchase Contract (a copy of which is attached), and due to the fact that "flipping" real estate often involves fraud, the Utah Insurance Commissioner and the Title and Escrow Commission have determined the following structure to be the only permitted method of acting as escrow wherein the same parcel of property is purchased and then immediately sold.

The transactions effected by this bulletin are those transactions in which Seller "A" contracts with Buyer "B" to sell a parcel of property. Buyer "B" then contracts with Buyer "C" to sell the same parcel of property. Buyer "B" anticipates acquiring the parcel and selling the parcel at or near the same time.

The transaction between Seller "A" and Buyer "B" must close independently from the transaction between Buyer "B" and Buyer "C." The funds deposited by Buyer "C" may not be used to fund the closing between Seller "A" and Buyer "B." Buyer "B" must provide funds independent of the funds generated by Buyer "C."

A policy of title insurance must be issued in the Seller "A" to Buyer "B" transaction and in the Buyer "B" to Buyer "C" transaction. Each real estate transaction must stand on its own. Buyer "B" must close with Buyer "B's" own good funds and record so that Buyer "B" is in title prior to the second transaction closing and recording.

The above structure insures compliance with 31A-23a-406 and R590-153-5.

31A-23a-406. Title insurance producer's business.

(1) A title insurance producer may do escrow involving real property transactions if all of the following exist:

(a) the title insurance producer is licensed with:

- (i) the title line of authority; and
- (ii) the escrow subline of authority;
- (b) the title insurance producer is appointed by a title insurer authorized to do business in the state;
- (c) one or more of the following is to be issued as part of the transaction:
 - (i) an owner's policy of title insurance; or
 - (ii) a lender's policy of title insurance;

(5) (a) A check from the trust account described in Subsection (1)(d) may not be drawn, executed, or dated, or funds otherwise disbursed unless the segregated escrow account from which funds are to be disbursed contains a sufficient credit balance consisting of collected or cleared funds at the time the check is drawn, executed, or dated, or funds are otherwise disbursed.

(b) As used in this Subsection (5), funds are considered to be "collected or cleared," and may be disbursed as follows:

- (i) cash may be disbursed on the same day the cash is deposited;
- (ii) a wire transfer may be disbursed on the same day the wire transfer is deposited;
- (iii) the following may be disbursed on the day following the date of deposit:
 - (A) a cashier's check;
 - (B) a certified check;
 - (C) a teller's check;
 - (D) a U.S. Postal Service money order; and
 - (E) a check drawn on a Federal Reserve Bank or Federal Home Loan Bank; and
- (iv) any other check or deposit may be disbursed:
 - (A) within the time limits provided under the Expedited Funds Availability Act, 12 U.S.C. Section 4001 et seq., as amended, and related regulations of the Federal Reserve System; or
 - (B) upon written notification from the financial institution to which the funds have been deposited, that final settlement has occurred on the deposited item.

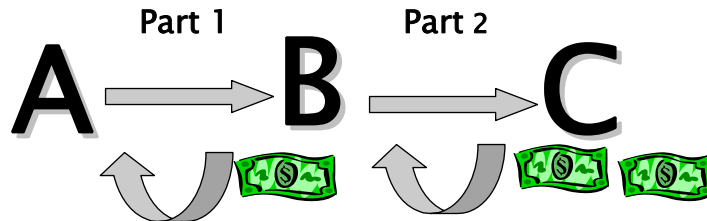
(c) Subject to Subsections (5)(a) and (b), any material change to a settlement statement made after the final closing documents are executed must be authorized or acknowledged by date and signature on each page of the settlement statement by the one or more persons affected by the change before disbursement of funds.”

R590-153-5. Unfair Methods of Competition, Acts and Practices.

The commissioner finds that providing or offering to provide any of the following benefits by parties identified in Section R590-153-3 to any client, either directly or indirectly, except as specifically allowed in Section R590-153-6 below, is a material and unfair inducement to obtaining title insurance business and constitutes an unfair method of competition in the business of title insurance prohibited under Section 31A-23a-402:

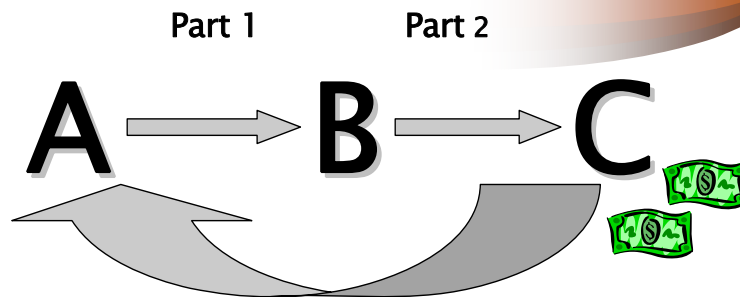
E. Deferring or waiving any payment for insurance or services otherwise due and payable, including "holding for resale."

LEGAL FLIPS



There is nothing wrong with buying property to sell for a profit... even in the short term.

ILLEGAL FLIPS / EQUITY SKIMMING



- There is a violation of the “good funds” (collected & cleared by bank) statute if you use proceeds from Buyer “C” to fund Seller “A”.
- Buyer “B” is selling property to “C,” which buyer “B” does not yet hold title to.

Dated this 30th day of January 2007.

D. KENT MICHIE
Utah Insurance Commissioner